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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.11.2021

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.8831 of 2017
and
W.M.P.No.9684 of 2017

M/s.Orange Media Solutions,
Flat No.4B, Third Block,
Ceebros Shymala Gardens,
Door No.136, Arcot Road, Saligramam,
Chennai - 600 093.

... Petitioner

..Vs..

- 1.The Divisional Railway Manager,
Chennai Division, Southern Railway,
Divisional Office, Commercial Branch,
Chennai - 600 003.
- 2.The Divisional Commercial Manager,
Southern Railway,
Divisional Commercial Manager's Office,
Chennai - 600 003.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to amend the Letter of Award and carry forward the already paid License Fee for the year 2016 - 2017 to the year 2017-2018.

For Petitioner : M/s.K.N.Shanthi

For Respondents : Mr.P.T.Ramkumar
Standing Counsel

O R D E R

This writ petition has been filed, praying to direct the respondents to amend the Letter of Award and carry forward the already paid License Fee for the year 2016 - 2017 to the year 2017-2018.



2. The petitioner is carrying on business as an outdoor advertising agency and participated in a tender and stood successful bidder for Bulk Rights Advertisements at Tirusulam Railway Station for a period of three years i.e., from 20.01.2016 to 20.01.2019. It is the case of the petitioner that they are not able to get permission from the Chennai Corporation to erect the display hoardings and advertisement boards at the premises of the Tirusulam Railway Station in terms of the contract of Bulk Rights Advertisement entered on 20.01.2016. While so, the petitioner received a communication dated 09.03.2017 from the 1st respondent directed the petitioner to pay a sum of Rs.59,45,500/- towards licence fee for the period from 03.03.2017 to 02.03.2018 on or before 17.03.2017, failing which, the contract so awarded would be terminated without any further notice. Aggrieved by the same, the petitioner has come forward with the present Writ Petition, seeking a Mandamus to the respondents to amend the Letter of Award and carry forward the already paid license fee for the year 2016-2017 to the year 2017-18.

3. Per contra, Mr.P.T.Ram Kumar, the learned standing counsel appearing for the respondents submitted that the contract for Bulk Rights advertisements for a period of three years, starting from 04.03.2016 to 03.03.2019 and the same was already over. He pointed out that as per the terms of the contract, it is the personal responsibility of the petitioner to obtain all kinds of permission/NoC from the concerned authorities for the purpose of erecting display hoardings and advertisement boards at the premises of Tirusulam Railway Station. In this regard, the learned counsel referred to Clause 12.09 of the Contract, which reads as follows:

"12.09. It is your personal responsibility to obtain all kinds of permissions / NOCs from outside agencies like Municipality, Road Transport Authority etc."

Therefore, the learned standing counsel would submit that it is the obligation cast upon the petitioner to obtain necessary permission or NoC from the authorities for erecting the display hoardings and advertisement boards and failure to get the same by the petitioner would not prevent the respondent to claim license fee, which is liable to be paid by the petitioner as per the terms of the contract. In such circumstances, the claim of the petitioner either to amend the Letter of Award or to adjust the license fee, cannot be considered. However, the learned standing counsel also submitted that in fact, no representation has been made by the petitioner either for adjustment or refund of the license fee.



4. Heard the learned counsel appearing for both parties and perused the entire materials available on record.

5. It is not in dispute that the petitioner was awarded the contract for Bulk Rights Advertisement for a period of three years, i.e. from 20th January, 2016 to 20th January, 2019, which came to be end. The grievance of the petitioner is that they made necessary applications to the Corporation of Chennai to get permission, but the Corporation has not granted any permission so far. Of course, the respondents are nothing to do with the failure of the petitioner in getting the permission from the Corporation of Chennai as per the Clause referred to above. The grievance of the petitioner is that without enjoying the fruits of the contract, the period of contract was over and in such circumstances, the petitioner seeks indulgence of the respondents either to amend the Letter of Award or to adjust/refund the license fee. This Court finds that there is reasonable justification in the claim of the petitioner.

6. Therefore, this Court grants liberty to the petitioner to make appropriate representation to the respondents, within a period of four weeks from the date of receipt of a copy of this order. On such representation being made, the respondents are directed to consider the representation and dispose of the same on merits and in accordance with law, within a period of four weeks thereafter.

7. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

Pns

To

1.The Divisional Railway Manager,
Chennai Division, Southern Railway,
Divisional Office, Commercial Branch,
Chennai - 600 003.



2.The Divisional Commercial Manager,
Southern Railway,
Divisional Commercial Manager's Office,
Chennai - 600 003.

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+1cc to Mrs.K.N.Shanthi, Advocate SR.No.58347

+1cc to Mr.P.T.Ramkumar, Advocate SR.No.57741

W.P.No.8831 of 2017

and

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CA (CO)

GMV (06/12/2021)